

REMARKS

The present Amendment amends claims 4, 6, 10, 14, 15 and 17. Therefore, the present application has pending claims 4, 6, 10, 14, 15 and 17.

Claims 4, 6, 10, 14, 15 and 17 stand objected to due to informalities noted by the Examiner in paragraph 5 of the Office Action. Amendments were made to claims 4, 6, 10, 14, 15 and 17 to correct the informalities noted by the Examiner. Therefore, this objection is overcome and should be withdrawn. Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

Claims 4, 6, 10, 14, 15 and 17 stand rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Various amendments were made throughout claims 4, 6, 10, 14, 15 and 17 to bring them into conformity with the requirements of 35 USC §112, second paragraph. Therefore, Applicants submit that this rejection is overcome and should be withdrawn.

Specifically, amendments were made throughout claims 4, 6, 10, 14, 15 and 17 to overcome the objections noted by the Examiner in paragraphs 6 and 7 of the Office Action.

Claims 4 and 10 stand rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter. Amendments were made to claims 4 and 10 to include language similar to that suggested by the Examiner. Particularly, amendments were made to claims 4 and 10 to recite a step of selecting a volume based on the comparison to allocate the selected volume to the computer. In the Office Action the Examiner indicated that including

such a limitation in claims 4 and 10 would make these recite a useful, concrete and tangible result, thereby complying the requirements of 35 USC §101. Therefore, since the claims were amended in a manner similar to that suggested by the Examiner in the Office Action, claims 4 and 10 now recite statutory subject matter as required by 35 USC §101. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Claim 4 stands provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 2, 3 and 5 of copending Application No. 11/480,394; and claims 6, 10, 14, 15 and 17 stand provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 6, 7, 11 and 12 of copending Application No. 11/480,394. Applicants do not agree with these rejections. However, in order to expedite prosecution of the present application filed on even date herewith is a Terminal Disclaimer obviating these rejections. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested.

It should be noted that the filing of the Terminal Disclaimer was not intended nor should it be considered as an agreement on Applicants part that the features recited in claims 4, 6, 10, 14, 15 and 17 are taught or suggested by claims 2, 3, 5-7, 11 and 12 of the copending application. The filing of the Terminal Disclaimer was simply intended to expedite prosecution of the present application.

In view of the foregoing amendments and remarks, applicants submit that claims 4, 6, 10, 14, 15 and 17 are in condition for allowance. Accordingly, early allowance of claims 4, 6, 10, 14, 15 and 17 is respectfully requested.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C., Deposit Account No. 50-1417 (501.43788X00).

Respectfully submitted,

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